

ARDEN R. GROVER
JOHN R. SCHUMACHER

IBLA 83-4

Decided June 7, 1983

Appeal from decision of Montana State Office, Bureau of Land Management, canceling noncompetitive oil and gas lease. M 52103.

Affirmed in part; vacated in part; and remanded.

1. Oil and Gas Leases: Cancellation -- Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease must be canceled pursuant to 43 CFR 3103.3-1 where the offer was not accompanied by full payment of the first year's rental, but the deficiency is less than 10 percent, and the deficiency was not paid within 30 days from notice thereof.

2. Accounts: Refunds -- Federal Land Policy and Management Act of 1976: Leases -- Oil and Gas Leases: Rentals

Where a noncompetitive oil and gas lease is canceled because a rental deficiency is not timely cured, the Department may return the rental pursuant to sec. 304(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1734(c) (1976), in appropriate circumstances where the lessee has derived no benefit from possession of the lease and there are no other factors militating against repayment.

APPEARANCES: Arden R. Grover, pro se, and for John R. Schumacher.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Arden R. Grover and John R. Schumacher have appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated August 17, 1982, canceling their noncompetitive oil and gas lease, M 52103.

Effective June 1, 1982, a noncompetitive oil and gas lease was issued to appellants for 1,785.65 acres of land situated in Madison County, Montana, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). The lease was issued in response to a noncompetitive oil and gas offer filed by appellants on July 24, 1981, along with a portion of the first year's advance rental payment in the amount of \$1,784. 1/ By notice dated May 19, 1982, BLM requested appellants to pay the deficiency in the rental payment of \$2 "within 30 days from receipt of this notice under penalty of cancellation of the lease," in accordance with 43 CFR 3111.1-1(e). The notice was sent certified mail, return receipt requested. The record indicates that the notice was received by appellants on May 24, 1982. In its August 1982 decision, BLM canceled appellants' oil and gas lease because the 30-day time period "lapsed as of close of business June 23, 1982, without the additional rental being submitted." In their statement of reasons for appeal, appellants contend that the rental deficiency was due to a "clerical error" and request an extension of time to submit the deficient rental payment. 2/

[1] The applicable regulation, 43 CFR 3103.3-1, states that an offer which is deficient in the first year's rental by not more than 10 percent will be approved, but requires that the additional rental be paid "within 30 days from notice under penalty of cancellation of the lease." The deficient rental is a curable defect, provided the additional rental is timely paid. 43 CFR 3111.1-1(e). The record indicates that appellants received the BLM notice of the rental deficiency on May 24, 1982, but failed to pay within the 30-day time period. Failure to respond within the required 30-day time period results in mandatory cancellation of appellants' noncompetitive oil and gas lease. Warren L. Jacobs, 71 IBLA 385 (1983), and cases cited therein.

[2] There remains the question of whether the first year's advance rental payment may be refunded to appellants. This was at one time a matter left to the discretion of the Secretary of the Interior, under section 204(a) of the Public Land Administration Act, 43 U.S.C. § 1374 (1970). Effective October 21, 1976, section 204(a) of the Public Land Administration Act, *supra*, was repealed by section 705(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1976). However, section 304(c) of FLPMA,

1/ Appellants' rental payment was apparently calculated at \$1 per acre or fraction thereof in accordance with their calculation of lands requested in the lease offer, i.e., "1783.67 Acres." BLM recalculated the acreage at 1,785.65 acres.

2/ By letter dated June 25, 1982, and received by BLM on June 28, 1982, appellants withdrew their "oil and gas lease offer, serial number M-52103" and requested a refund of the first year's advance rental payment. In its August 1982 decision, BLM stated that the oil and gas lease offer could not be withdrawn because it was received "subsequent to issuance of the lease" and that the rental payment was "non refundable." 43 CFR 3110.1-4(a) provides that an offer may not be withdrawn "unless the withdrawal is received by the proper office before the lease * * * has been signed on behalf of the United States." Appellants' lease was signed on behalf of the United States on May 19, 1982. As the withdrawal was not received until after that date, it was properly denied. We consider the question of a refund, infra.

43 U.S.C. § 1734(c) (1976), for the most part, recites verbatim the language of section 204(a). ^{3/} Under section 304(c), the circumstances of this case would permit repayment. See Albert J. Finer, 27 IBLA 61 (1976). There is no evidence that appellants derived any benefit from possession of the lease during the relatively short time that they held the lease. Nor any indication of mala fides or other factors militating against repayment. Applying the standard of discretion enunciated in cases under section 204(a), we conclude that appellants may be granted a refund of the first year's advance rental payment made by them. See Bruce Anderson, 30 IBLA 118 (1976); Charles J. Babington, 17 IBLA 435 (1974).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, that part of the decision appealed from which cancels the lease is affirmed, and that part of the decision denying refund of the rental is vacated, and the case is remanded to BLM for further action consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Bruce R. Harris
Administrative Judge

^{3/} Section 304(c) of FLPMA, *supra*, provides in full:

"In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulation issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds."

